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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT, SAN JOSE BRANCH OF CALIFORNIA

CHEVRON INTELLECTUAL PROPERTY LLC
and CHEVRON U.S.A. INC.,

Plaintiffs,

vs.

THOMAS CUTHBERTSON, individually and
doing business as HOMESTEAD AUTO WASH,
MARY MARCHESE, an individual,
CHRISTOPHER MARCHESE JR., an individual,
AND DOES 1-50 INCLUSIVE,

Defendants.

**COMPLAINT FOR TRADEMARK
INFRINGEMENT; TRADEMARK
COUNTERFEITING; TRADEMARK
DILUTION; TRADE DRESS
INFRINGEMENT; UNFAIR
COMPETITION; AND UNJUST
ENRICHMENT**

DEMAND FOR JURY TRIAL

Complaint Filed: None Set
Trial Date: None Set

This is an action for federal trademark counterfeiting, trademark infringement, trademark dilution, and unfair competition under the Lanham Act (15 U.S.C. § 1051, *et seq.*); and for unfair competition, unfair trade practices, and dilution under California statutory and common law. Plaintiffs, Chevron Intellectual Property LLC and Chevron U.S.A. Inc., are seeking a permanent injunction, damages, profits, treble damages or profits, attorneys' fees, costs, and other appropriate relief. Plaintiffs, appearing through their undersigned counsel, allege as follows:

JURISDICTION

1. This Court is vested with jurisdiction over the parties and the subject matter of the action under 15 U.S.C. § 1121, 28 U.S.C. § 1338(a), and 28 U.S.C. § 1331.

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**COMPLAINT FOR TRADEMARK INFRINGEMENT; TRADEMARK COUNTERFEITING; TRADEMARK
DILUTION; TRADE DRESS INFRINGEMENT; UNFAIR COMPETITION; AND UNJUST ENRICHMENT**

2. This Court has supplemental jurisdiction over the claims in this Complaint which arise under the statutory and common law of the State of California pursuant to 28 U.S.C. § 1367(a), since the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

VENUE

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b). The acts of infringement that are the subject of this litigation occurred and are occurring in the Northern District of California; the claims alleged in this action arose in the Northern District of California; and victims of Defendants' infringing activities may be found in the Northern District of California.

PARTIES

4. Plaintiff Chevron Intellectual Property LLC is a Delaware limited liability company, with a principal place of business at 6001 Bollinger Canyon Road, San Ramon, California 94583.

5. Plaintiff Chevron U.S.A. Inc. is a Pennsylvania corporation, with a principal place of business at 6001 Bollinger Canyon Road, San Ramon, California 94583.

6. On information and belief Defendant Thomas Cuthbertson is an individual residing in California and is conducting business under the fictitious business name, Homestead Auto Wash. Homestead Auto Wash is an automobile gasoline service station and car wash doing business in California and located at 3500 Homestead Road, Santa Clara, CA 95051. On information and belief, the products and/or services being sold under the infringing trademarks and/or trade dress in this action are being sold and/or distributed at 3500 Homestead Road, Santa Clara, CA 95051.

8. On information and belief Mary Marchese is an individual residing in the State of California and is the owner or co-owner of a parcel of land located at 3500 Homestead Road, Santa Clara, CA 95051 that is occupied or has been occupied by Homestead Auto Wash. On information and belief, the products and/or services being sold under the infringing trademarks and/or trade dress

1 in this action are being sold and/or distributed at 3500 Homestead Road, Santa Clara, CA 95051 and
2 Mary Marchese leases said premises to Homestead Auto Wash.

3
4 9. On information and belief Christopher Marchese, Jr. is an individual residing in the
5 State of California and is the owner or co-owner of a parcel of land located at 3500 Homestead Road,
6 Santa Clara, CA 95051 that is occupied or has been occupied by Homestead Auto Wash. On
7 information and belief, the products and/or services being sold under the infringing trademarks and/or
8 trade dress in this action are being sold and/or distributed at 3500 Homestead Road, Santa Clara, CA
9 95051 and Christopher Marchese leases said premises to Homestead Auto Wash.

10
11 10. Chevron does not know the true names or capacities of the persons or entities sued
12 herein as DOES 1 to 50, inclusive, and therefore sues such defendants by such fictitious names.
13 Chevron is informed and believes and thereon alleges that each of the DOE defendants is in some
14 manner legally responsible for the damages suffered by Chevron as alleged herein. Chevron will
15 amend this complaint to set forth the true names and capacities of these defendants when they have
16 been ascertained, along with appropriate charging allegations, as may be necessary.

17
18 11. Hereinafter, Defendant Mary Marchese, Defendant Christopher Marchese, and
19 Defendant Thomas Cuthbertson and DOES 1-50 inclusive will be collectively referred to as
20 "Defendants."

21
22 **CHEVRON'S BUSINESS**

23 12. In 2001, Chevron merged with Texaco Inc. and thereby acquired ownership of the
24 Texaco brand, including its federally registered trademark registrations (the "Texaco Marks"). Within
25 the Chevron corporate family, Chevron Intellectual Property LLC is the owner of, and Chevron U.S.A.
26 Inc. is the primary licensee of, among others, the following federally registered Texaco Marks:

27 **TEXACO**, U.S. Trademark Registration No. 794,947, registered August 24,
28 1965, for "gas station services;"

1 **TEXACO**, U.S. Trademark Registration No. 1,209,440, registered September
 2 21, 1982, for “motor and aviation gasolines, jet fuels, diesel fuels, kerosenes,
 3 fuel oils, home heating oils, lubricating oils and greases;”

4 **Star T Design**, U.S. Trademark Registration No. 1,315,019, registered
 5 January 15, 1985, for “gas station services;”

6 **Star T Design**, U.S. Trademark Registration No. 1,222,305, registered
 7 January 4, 1983, for “gasoline;”

8 **TEXACO and Star T Design**, U.S. Trademark Registration No. 1,315,020,
 9 registered January 15, 1985, for “gas station services;”

10 **TEXACO and Star T Design**, U.S. Trademark Registration No. 1,222,306,
 11 registered January 4, 1983, for “gasoline;”

12 **Service Station Canopy Design**, U.S. Trademark Registration No. 2,259,016,
 13 registered July 6, 1999, for “gas station services;”

14 **Gasoline Pump Design**, U.S. Trademark Registration No. 2,251,166,
 15 registered June 8, 1999, for “gas station services;” and

16 **Building Design**, U.S. Trademark Registration No. 2,264,612, registered July
 17 27, 1999, for “automobile service, station services; automotive maintenance
 18 and repair services; automotive lubrication and oil change services.”
 19

20 13. These Registrations are valid, subsisting, and have been registered for over five years
 21 and/or are incontestable pursuant to 15 U.S.C. § 1065. (See Exhibits 1 through 9, which are certified
 22 copies of the above nine Registrations.) Chevron is the owner of 27 other federal registrations for
 23 trademarks and/or service marks consisting of or comprising the mark **TEXACO**.
 24

25 14. Chevron has also used extensively for many years and acquired exclusive common law
 26 rights in the designations **POWER PLUS** and **POWER PREMIUM** for its gasolines. These marks
 27 are also part of the Texaco Marks.
 28

///

1 15. For many years now, licensee Chevron U.S.A. Inc. and its predecessor Texaco Inc.
2 have been engaged in the operation of TEXACO-brand gasoline service stations. Since the merger
3 between the Chevron and Texaco companies in 2001, Chevron has owned the Texaco Marks
4 comprising the TEXACO and Star T Design trademarks and all related word marks, logos, and pump,
5 canopy and building color designs and patterns that comprise a TEXACO brand service facility. For a
6 period of time after the 2001 merger, Chevron licensed the use of the Texaco Marks through Shell Oil
7 Company and other related companies. On June 30, 2006, those licensing arrangements terminated
8 such that Shell and other companies were no longer involved in the licensing of the Texaco Marks.

9
10 16. Chevron's authorized TEXACO-branded stations provide gasoline and petroleum
11 products to the owners of cars, SUVs, light trucks, and other motor vehicles. Chevron's authorized
12 TEXACO-branded stations sell TEXACO brand gasoline. Many of the stations also provide vehicle
13 maintenance services, vehicle tune-up services, oil change services, car wash services, and/or retail
14 convenience store services. There are over 2,400 TEXACO-branded stations nationwide licensed
15 under the federally registered Texaco Marks and the trademarks and/or unique station appearance
16 shown in those registrations.

17
18 17. Chevron's TEXACO mark for gasoline, gas station services and related goods and
19 services has been in use since at least as early as 1911. Chevron has expended large sums of money
20 over many years in the advertising of goods and services under its TEXACO mark throughout the
21 United States, including California. As a result of this long term use of the TEXACO mark, this mark
22 has become well known to the trade and the general public throughout the United States, and Chevron
23 has established extensive goodwill and public recognition in and to the inherently distinctive
24 TEXACO mark as an exclusive identification of the goods and services of Chevron. The TEXACO
25 mark has also become famous.

26 ///

27 ///

28 ///

1 18. Chevron has used some variation of a Star Design mark since at least as early as 1903.
2 The current version of this mark, the Star T Design mark, has been in continuous use, both alone and
3 in combination with the TEXACO mark, since at least as early as 1981. As a result of Chevron's
4 longstanding use of the Star T Design mark and related Star Design marks, this mark has become well
5 known to the trade and the general public throughout the United States, and Chevron has established
6 extensive goodwill and public recognition in and to the inherently distinctive Star T Design mark as an
7 exclusive identification of the services of Chevron. The Star T Design mark has also become famous.

8
9 19. Licensed TEXACO-branded service station facilities are authorized to use and
10 prominently display exterior and interior signage that bear Chevron's registered TEXACO and Star T
11 Design trademarks. These licensed facilities typically also use and display additional materials
12 including banners, posters, mats, stationery, clocks, and business cards that bear the Texaco Marks.

13
14 20. The buildings and premises of many licensed TEXACO-branded facilities often also
15 have a distinctive and proprietary exterior appearance unique to TEXACO-brand facilities. This
16 distinctive appearance comprises some or all of the following elements: i) (building) a pattern of red
17 and black building fascia, in combination with silver and dark gray, and the Star T Design mark on the
18 fascia; ii) (canopy) a rigid weather canopy over the gasoline pumps with a black background and red
19 border along the bottom edge of the side of the canopy, the TEXACO and Star T Design marks on the
20 canopy, a series of vertical red lines forming a gradient design along the canopy, and gray poles
21 supporting the canopy; and iii) (pumps) red and black gasoline pumps. (See Exhibits 7, 8 and 9 to this
22 Complaint). These distinctive elements are federally protected and covered by U.S. Registration Nos.
23 2,259,016; 2,251,166; and 2,264,612.

24
25 21. Authorized TEXACO-branded facilities have displayed this distinctive exterior trade
26 dress since at least as early as 1981. As a result of this long term use of the TEXACO exterior trade
27 dress, the trade dress has become well known to the trade and the general public throughout the United
28

1 States, and Chevron has established extensive goodwill and public recognition in and to the distinctive
2 exterior trade dress as an identification of Chevron's goods and services.

3
4 **DEFENDANTS' IMPROPER CONDUCT**

5 22. Upon information and belief, Defendants once operated as a licensed, authorized
6 TEXACO-branded service station and sold authentic TEXACO brand gasoline and related products.
7 On information and belief, over that time Defendants serviced many thousands of vehicles under one
8 or more of Chevron's Texaco Marks. At least by June 30, 2006, Defendants were no longer selling or
9 supplying authentic TEXACO brand gasoline or products and were no longer an authorized licensee of
10 Chevron's Texaco Marks comprising the TEXACO and Star T Design marks and Chevron's
11 distinctive exterior trade dress. After June 30, 2006 Defendants were obligated to fully remove the
12 Texaco Marks from their facility and property, however, Defendants have refused to remove the
13 Texaco Marks at their facility.

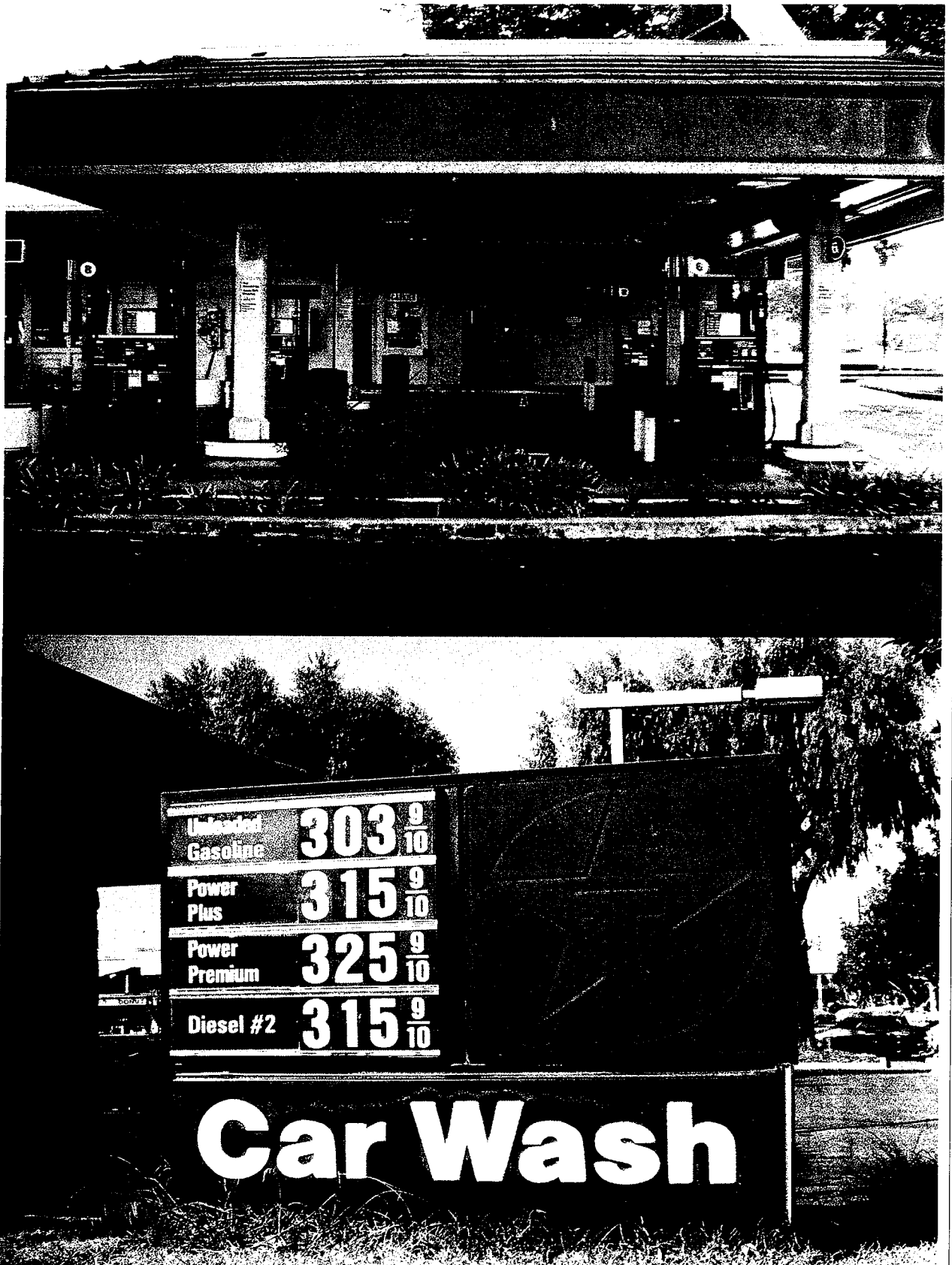
14
15 23. As a result, Defendants are continuing to falsely operate their facility as a TEXACO-
16 branded facility and sell non-authentic gasoline falsely as a TEXACO product, all without
17 authorization or license from Chevron.

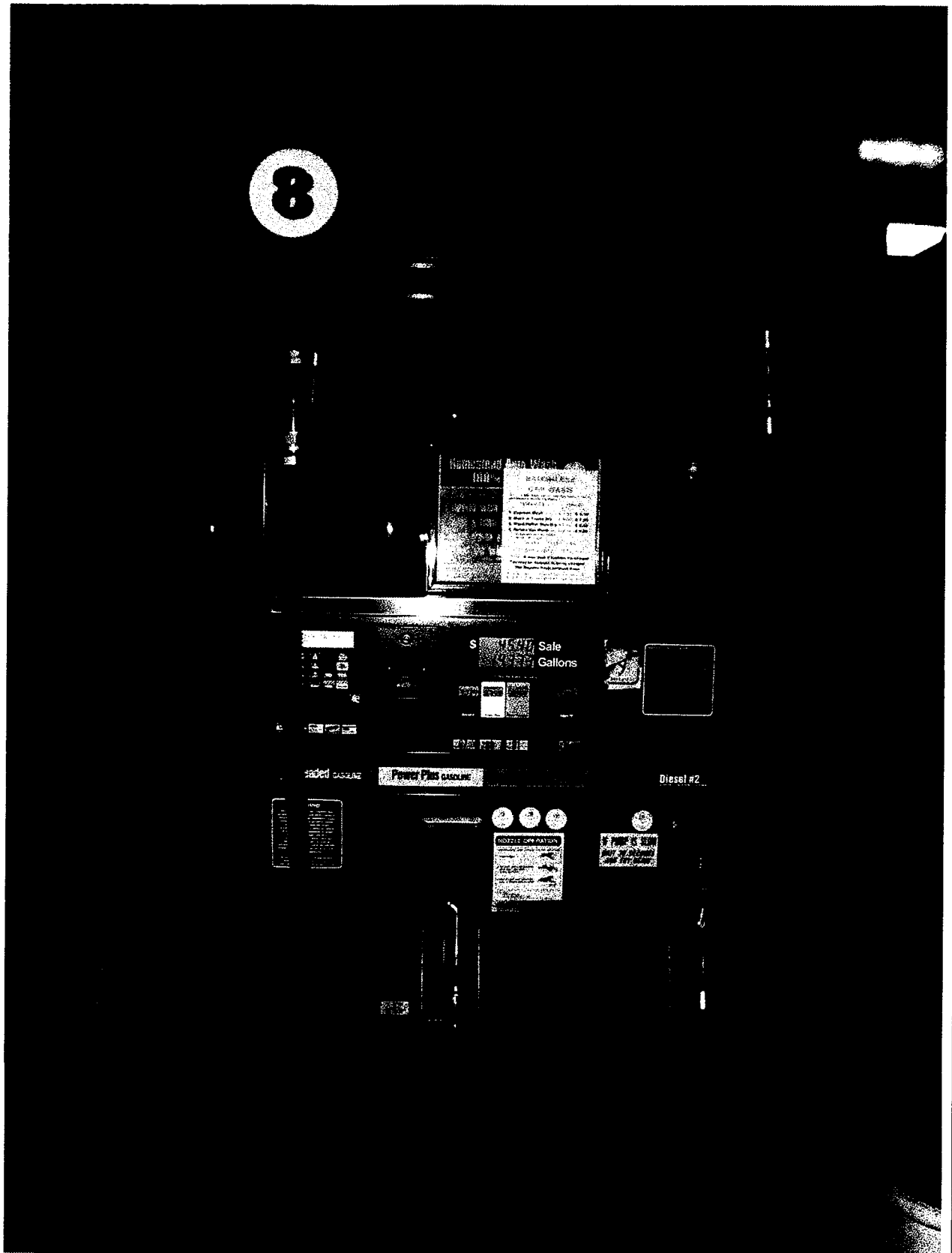
18
19 24. Defendants have continued to display and use the infringing signage on their property
20 and at their business located at 3500 Homestead Road, Santa Clara, CA 95051. On information and
21 belief, the products and/or services being sold under the infringing trademarks and/or trade dress in
22 this action are being sold and/or distributed at 3500 Homestead Road, Santa Clara, CA 95051 since
23 after June 30, 2006. In addition, since Defendants are no longer selling TEXACO brand gasoline,
24 Defendants are falsely creating the impression, through the use of the Texaco Marks, that their
25 gasoline is TEXACO brand gasoline and thereby deceiving and defrauding customers. Defendants'
26 improper conduct includes use of the Texaco Marks as displayed below:

27 ///

28 ///







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COMPLAINT FOR TRADEMARK INFRINGEMENT; TRADEMARK COUNTERFEITING; TRADEMARK DILUTION; TRADE DRESS INFRINGEMENT; UNFAIR COMPETITION; AND UNJUST ENRICHMENT

1 22. Defendants are not licensed, authorized or otherwise permitted by Chevron to use or
2 otherwise display the TEXACO name or mark, the Star T Design mark, Chevron's distinctive exterior
3 trade dress, and/or any other marks or designations of Chevron, in such a way as to suggest an
4 affiliation, sponsorship, license, connection, or other association with Chevron.

5
6 **EFFECT OF DEFENDANTS' ACTIVITIES ON CHEVRON**

7 **AND THE CONSUMING PUBLIC**

8 23. Defendants' past and continuing unauthorized use of Chevron's Texaco Marks is likely
9 to cause confusion, mistake, and/or deceive customers and potential customers of the respective
10 parties, as to some presumed but nonexistent affiliation, connection, sponsorship, and/or association of
11 Defendants with Chevron, and/or as to the origin, sponsorship, or approval of Defendants' products
12 and services by Chevron.

13
14 24. Defendants' unauthorized use of Chevron's Texaco Marks suggests to the purchasing
15 public that Defendants, their products and services originate with Chevron, and/or are affiliated,
16 connected, or associated with Chevron, or are sponsored, endorsed, or approved by Chevron, when in
17 fact they are not.

18
19 25. Defendants' unauthorized use of Chevron's Texaco Marks falsely designates the origin
20 of Defendants' products and services, and falsely and misleadingly describes and represents with
21 respect to Defendants and their products and services.

22
23 26. Defendants' unauthorized use of Chevron's Texaco Marks enables the Defendants to
24 call attention to their business and products and services, and to trade on and receive the benefit of the
25 goodwill built up at great labor and expense over many, many years by Chevron and its predecessor
26 Texaco, and to gain acceptance for their products and services not on their own merits, but as a free
27 ride on the reputation and goodwill of Chevron and its well known and valuable marks.

1 27. Defendants are being unjustly enriched at the expense of Chevron and Chevron's
2 licensees by Defendants' unauthorized use of Chevron's Texaco Marks.

3
4 28. Defendants' unauthorized use of Chevron's Texaco Marks places the valuable
5 reputation and goodwill of Chevron's trademarks improperly in the hands of Defendants.

6
7 29. Defendants' ongoing unauthorized use of Chevron's Texaco Marks as still in use and
8 prominently displayed at a non-licensed facility is falsely promoting that facility and property as still
9 being affiliated with Chevron and damaging Chevron's goodwill by falsely associating Chevron with
10 that unlicensed facility.

11
12 30. Unless this Court restrains these acts of Defendants, they will continue to cause
13 irreparable injury to Chevron and to the public, for which there is no adequate remedy at law.

14 **COUNT I**
15 **(Infringement of Federally Registered Trademarks)**
16 **(15 U.S.C. § 1114)**

17 31. Chevron repeats, reiterates, and realleges paragraphs 1 through 30 above, as if fully set
18 forth herein.

19 32. Defendants are marketing, offering for sale, and selling into interstate commerce
20 gasoline and related gas station services and other automotive-related services and products in
21 association with their unauthorized use of Chevron's Texaco Marks.

22
23 33. Defendants have infringed and continue to infringe Chevron's federally registered
24 Texaco Marks set forth above under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

25
26 34. The use and display by Defendants of Chevron's Texaco Marks has caused and will
27 continue to cause serious and irreparable injury to the reputation and goodwill of Chevron for which
28 Chevron is without adequate remedy at law. Defendants' use of Chevron's Texaco Marks creates the

1 false and misleading impression that Defendants' goods are manufactured and/or distributed by
 2 Chevron, are associated or connected with Chevron or have the sponsorship, approval or endorsement
 3 of Chevron.

4
 5 35. Because of Defendants' infringement, Chevron has been injured and damaged, and is
 6 entitled to recover damages, Defendants' profits, and costs pursuant to 15 U.S.C. § 1117.

7
 8 36. Defendants used and are using and displaying Chevron's Texaco Marks with full
 9 knowledge of Chevron's rights, and in bad faith with willful and deliberate intent to trade on
 10 Chevron's substantial recognition, reputation, and goodwill. In view of the willful nature of
 11 Defendants' infringement and unfair competition, this is an exceptional case within the meaning of 15
 12 U.S.C. § 1117(a).

13
 14 **COUNT II**
(Infringement of Trademark Rights)
(15 U.S.C. § 1125(a)-(c))

15 37. Chevron repeats, reiterates, and realleges paragraphs 1 through 36 above, as if fully set
 16 forth herein.

17
 18 38. Defendants are marketing, offering for sale, and selling into interstate commerce
 19 gasoline and related gas station services and other automotive-related services and products in
 20 association with their unauthorized use of Chevron's Texaco Marks.

21
 22 39. Such activity of Defendants misrepresents the nature, characteristics, or qualities of
 23 Defendants' goods or services, and constitutes a false designation of origin, false or misleading
 24 description or representation of fact, each of which is likely to cause confusion, mistake, or deception
 25 among consumers that the Defendants' business is licensed, sponsored, approved, associated with, or
 26 otherwise entitled to use Chevron's TEXACO, Star T Design, and/or trade dress marks, when, in fact,
 27 Defendants have no authorization or permission from Chevron, and Defendants do not supply, sell or
 28 dispense Chevron products.

1 40. The conduct of Defendants constitutes unfair competition, false advertising, false
2 designation of origin, false description, and false representation that Defendants' facility and products
3 are sponsored, approved, or authorized by Chevron, all in violation of Section 43(a) of the Lanham
4 Act, 15 U.S.C. § 1125(a).

5
6 41. As a result of the Defendants' activities, Chevron has lost sales and profits and has
7 suffered and will continue to suffer irreparable injury to its business reputation and goodwill.
8 Chevron's remedy at law is not by itself adequate to compensate it for injuries inflicted and threatened
9 by Defendants.

10
11 42. By reason of Defendants' acts of unfair competition, false designation, description, and
12 representation described above, Chevron has suffered, and will continue to suffer, substantial damage
13 to its business reputation and goodwill, as well as diversion of trade and loss of profits in an amount
14 not yet fully ascertained.

15
16 43. Defendants' acts of unfair competition, false designation, description, and
17 representation are causing Chevron irreparable injury. Defendants continue to commit such acts, and,
18 unless restrained and enjoined, will continue to do so, to Chevron's irreparable injury. Chevron's
19 remedy at law is not adequate by itself to compensate it for injuries inflicted and threatened by
20 Defendants.

21
22 44. Because of Defendants' conduct in violation of Section 43(a), Chevron is being injured
23 and damaged, and is entitled to recover damages, Defendants' profits, and costs pursuant to 15 U.S.C.
24 § 1117.

25
26 45. Defendants used and are using Chevron's Texaco Marks with full knowledge of
27 Chevron's rights, and in bad faith with willful and deliberate intent to trade on Chevron's substantial
28

1 recognition, reputation, and goodwill. In view of the willful nature of Defendants' infringement and
2 unfair competition, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

3
4 **COUNT III**
5 **(Infringement of Common Law Trademark Rights – Trade Dress)**
6 **(15 U.S.C. §1125(a))**

7 46. Chevron repeats, reiterates, and realleges paragraphs 1 through 45 above, as if fully set
8 forth herein.

9 47. Defendants are supplying, marketing, offering for sale, and selling into interstate
10 commerce gasoline service station and other automotive-related services and products from their
11 facility at 3500 Homestead Road, Santa Clara, CA 95051.. Defendants' building and/or overall
12 facility has an exterior trade dress which is confusingly similar to the distinctive exterior trade dress
13 used by Chevron's authorized TEXACO facilities and which is covered by one or more of Chevron's
14 trade dress marks.

15
16 48. Defendants' use of an exterior trade dress similar to the distinctive trade dress used by
17 Chevron's TEXACO facilities is likely to cause confusion, mistake, or deception among consumers
18 and to cause consumers to mistakenly believe that Defendants' property and business is licensed,
19 sponsored, approved, or otherwise associated with Chevron.

20
21 49. The conduct of Defendants constitutes trade dress infringement, false designation of
22 origin, unfair competition, and false representation that Defendants' services and products are
23 sponsored, approved, or authorized by Chevron, all in violation of Section 43(a) of the Lanham Act,
24 15 U.S.C. § 1125(a).

25
26 50. As a result of the Defendants' activities, Chevron has lost sales and profits and has
27 suffered and will continue to suffer irreparable injury to its business reputation and goodwill.

1 Chevron's remedy at law is not by itself adequate to compensate it for injuries inflicted and threatened
2 by Defendants.

3
4 51. By reason of Defendants' acts of false designation, description, and representation
5 described above, Chevron has suffered, and will continue to suffer, substantial damage to its business
6 reputation and goodwill, as well as diversion of trade and loss of profits in an amount not yet fully
7 ascertained.

8
9 52. Defendants' acts of infringement, unfair competition, and false designation have caused
10 Chevron irreparable injury. Defendants continue to commit such acts, and unless restrained and
11 enjoined, will continue to do so, to Chevron's irreparable injury. Chevron's remedy at law is not
12 adequate by itself to compensate it for injuries inflicted and threatened by Defendants.

13
14 53. Because of Defendants' conduct in violation of Section 43(a), Chevron has been injured
15 and damaged, and is entitled to recover damages, Defendants' profits, and costs pursuant to 15 U.S.C.
16 § 1117.

17
18 54. Defendants are using Chevron's distinctive exterior trade dress with full knowledge of
19 Chevron's rights, and in bad faith with willful and deliberate intent to trade on Chevron's substantial
20 recognition, reputation, and goodwill. In view of the willful nature of Defendants' infringement and
21 unfair competition, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).]

22
23 **COUNT IV**
24 **(Trademark Dilution)**
(15 U.S.C. § 1125(c))

25 55. Chevron repeats, reiterates, and realleges paragraphs 1 through 54 above, as if fully set
26 forth herein.

1 56. Chevron has used its TEXACO mark for over 90 years. Chevron has used its present
2 Star T Design Mark for over 25 years and began using similar versions of the Star T Design mark in
3 1903. Chevron has spent hundreds of millions of dollars promoting and advertising its products and
4 services bearing Chevron's TEXACO and Star T Design marks for many years on a nationwide basis.
5 Chevron's TEXACO and Star T Design marks have also received significant unsolicited media
6 coverage. As a result of the foregoing, Chevron's TEXACO and Star T Design marks are famous.

7
8 57. Chevron's TEXACO and Star T Design marks became famous long before Defendants'
9 first unauthorized use and display of Chevron's TEXACO and Star T Design marks in 2006.

10
11 58. Defendants' unauthorized use of Chevron's TEXACO and Star T Design marks,
12 without license or permission from Chevron, has blurred and is likely to continue to blur the
13 distinctive quality of Chevron's TEXACO and Star T Design marks.

14
15 59. Defendants' unauthorized use of Chevron's TEXACO and Star T Design marks, in
16 connection with goods and services of a lower quality than customers are accustomed to receiving
17 from authorized TEXACO stations has tarnished and is likely to continue to tarnish the distinctive
18 quality of Chevron's TEXACO and Star T Design marks.

19
20 60. Defendants' use of the TEXACO and Star T Design trademarks, without license or
21 permission from Chevron, has caused dilution of Chevron's TEXACO and Star T Design marks and is
22 likely to continue to cause dilution of Chevron's TEXACO and Star T Design marks pursuant to 15
23 U.S.C. § 1125(c).

24
25 61. Defendants' dilution of Chevron's trademarks has been willful and has caused and will
26 continue to cause serious and irreparable injury to the reputation and goodwill of Chevron for which
27 Chevron is without adequate remedy at law.

COUNT V
(Trademark Counterfeiting)
(15 U.S.C. § 1114(1)(a))

62. Chevron repeats, reiterates, and realleges paragraphs 1 through 61 above, as if fully set forth herein.

63. Defendants are infringing Chevron's federally registered trademarks through their use in commerce of a reproduction, counterfeit, copy, or colorable imitation of the TEXACO and Star T Design marks, and/or other Texaco Marks, in the connection with the sale, offering for sale, marketing, distribution, or advertising of gas station services and related automotive services and products, with such use being likely to cause confusion, to cause mistake, or to deceive the public.

64. Defendants are intentionally using the TEXACO and Star T Design marks, and/or other Texaco Marks, knowing the marks are counterfeit. Defendants are intentionally infringing upon Chevron's trademark rights in order to further their own business enterprise.

65. Because of Defendants' intentional use of counterfeit marks, Chevron is being injured and damaged, and is entitled to recover costs, treble damages or profits, whichever is greater, and reasonable attorneys' fees under 15 U.S.C. § 1117(b).

66. The counterfeiting by Defendants of Chevron's trademarks has caused and will continue to cause serious and irreparable injury to the reputation and goodwill of Chevron for which Chevron is without adequate remedy at law.

COUNT VI
(Violation of California Business and Professions
Code Section 17200 -- Unfair Competition)

67. Chevron repeats, reiterates, and realleges paragraphs 1 through 66 above, as if fully set forth herein.

///

68. Defendants' aforesaid conduct constitutes unfair, unlawful, and fraudulent business practices in violation of California's Business & Professions Code § 17200 et seq.

69. The acts and conduct of Defendants alleged herein are likely to cause confusion in the trade as to the source of Defendants' goods and services and are likely to lead the public to mistakenly believe that Defendants are in some way connected with Chevron.

70. These wrongful acts of Defendants have proximately caused and will continue to cause Chevron substantial injury, including loss of customers, dilution of its goodwill, confusion for potential customers, injury to its reputation, and diminution in value of its trademarks and trade dress. These actions will cause imminent irreparable harm and injury to Chevron, the amount of which will be difficult to ascertain, if they continue. Chevron is without an adequate remedy at law.

71. As a direct and proximate result of the Defendants' unfair competitive acts, Chevron has been injured and damaged, and is entitled to injunctive relief and to recover actual damages, costs, and reasonable attorneys' fees. Chevron is also entitled to recover from Defendants the gains, profits, and advantages they have obtained as a result of their wrongful acts as hereinabove alleged. Chevron is unable to ascertain at this time the full extent of the gains, profits, and advantages Defendants have obtained by reason of their aforesaid unlawful conduct.

COUNT VI
(Violation of California's Common Law of Unfair Competition)

72. Chevron repeats, reiterates, and realleges paragraphs 1 through 71 above, as if fully set forth herein.

///

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///

///

1 73. The acts and conduct of Defendants alleged herein are likely to cause confusion in the
2 trade as to the source of Defendants' goods and services and are likely to lead the public to mistakenly
3 believe that Defendants are in some way connected with Chevron.

4
5 74. Defendants' actions constitute intentional and willful unfair competition and palming
6 off in violation of the common law of California. As set forth more fully above, Chevron has invested
7 a substantial amount of time, skill and money in its product and developing its TEXACO marks.
8 Defendants' acts and conduct in palming off the TEXACO marks were done without the authorization
9 or consent of Chevron at little or no cost to Defendant.

10
11 75. The intentional and willful unfair competition and palming off by Defendants have
12 caused and will continue to cause serious and irreparable injury to the reputation and goodwill of
13 Chevron for which Chevron is without adequate remedy at law.

14
15 76. As a direct and proximate result of the Defendants' unfair competitive acts, Chevron
16 has been injured and damaged, and is entitled to injunctive relief and to recover actual damages, costs,
17 and reasonable attorneys' fees.

18
19 77. Defendant's conduct was fraudulent, oppressive, malicious, and in conscious disregard
20 of the rights of Chevron, and Chevron is therefore entitled to punitive damages against them.

21
22 **COUNT VIII**
23 **(Unjust Enrichment)**

24 78. Chevron repeats, reiterates, and realleges paragraphs 1 through 77 above, as if fully set
25 forth herein.

26
27 79. The acts of Defendants complained of herein constitute unjust enrichment of
28 Defendants at the expense of Chevron.

1 WHEREFORE, Chevron prays for the following relief:

2 a. That this Court grant a permanent injunction pursuant to the powers granted it under 15
3 U.S.C. § 1116 and at common law, enjoining and restraining Defendants and their principals, agents,
4 servants, and employees directly or indirectly (i) from using or displaying any of Chevron's Texaco
5 Marks or any similar variations thereof (including, but not limited to, all of Defendants' exterior and
6 interior signage, building fascia appearance, canopies, pumps, clocks, banners and labeling, trade
7 names, advertising, invoices, stationery, directory listings, domain names, websites, Internet metatags,
8 keywords for Internet search engines, postURL or forwarding commands, hyperlinks, and any other
9 electronic coding and search terms), and (ii) from continuing any and all acts of deception, conspiracy,
10 or unfair competition as alleged herein;

11 b. That this Court, pursuant to the powers granted it under 15 U.S.C. § 1116(d), issue an
12 order pursuant to 15 U.S.C. § 1116(a) providing for the seizure and removal from their premises of all
13 Defendants' signage, property and goods bearing counterfeit trademarks, the means of making such
14 marks and records documenting the manufacture, sale, or receipt of things involved in such violation;

15 c. That this Court, pursuant to the powers granted it under 15 U.S.C. § 1117(b), award to
16 Chevron and against Defendants, treble damages or profits, whichever is greater, and reasonable
17 attorneys' fees because there has been intentional use of counterfeit marks or designations;

18 d. That this Court, pursuant to the powers granted it under 15 U.S.C. § 1117, award to
19 Chevron and against Defendants, damages, profits, and costs;

20 e. That this Court, pursuant to the powers granted it under 15 U.S.C. § 1117, award to
21 Chevron and against Defendants, Chevron's reasonable attorneys' fees because this is an exceptional
22 case;

23 f. That this Court, pursuant to the powers granted it under 15 U.S.C. § 1118 and at
24 common law, order that all merchandise, labels, banners, signs, clocks, prints, packages, wrappers,
25 receptacles, advertisements, and any other tangible items in the possession of Defendants bearing any
26 of Chevron's Texaco Marks, or trademarks confusingly similar thereto, shall be delivered up and
27 destroyed;

28 ///

g. That the Court award punitive and exemplary damages against Defendants and in favor of Chevron by reason of Defendants' intentional or reckless disregard for Chevron's rights and the rights of those defrauded;

h. That costs of this action be awarded to Chevron; and

i. That the Court grant such other and further relief as it deems just and reasonable.

Dated: December 18, 2007

CALL, JENSEN & FERRELL
A Professional Corporation
Scott J. Ferrell
Julie R. Trotter

By: 
Scott J. Ferrell

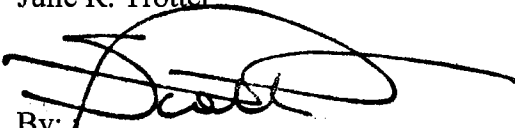
Attorneys for Plaintiffs Chevron Intellectual Property
LLC and Chevron U.S.A. Inc.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial pursuant to Federal Rule of Civil Procedure 38(b) on all issues raised in this action.

Dated: December 18, 2007

CALL, JENSEN & FERRELL
A Professional Corporation
Scott J. Ferrell
Julie R. Trotter

By: 
Scott J. Ferrell

Attorneys for Plaintiffs Chevron Intellectual Property
LLC and Chevron U.S.A. Inc

United States Patent Office

794,947
Registered Aug. 24, 1965

PRINCIPAL REGISTER **Service Mark**

Ser. No. 197,441, filed July 8, 1964

TEXACO

Texaco Inc. (Delaware corporation)
135 E. 42nd St.
New York, N.Y.

For: GAS-STATION SERVICES, in CLASS 103.
First use 1911; in commerce 1911.
Owner of Reg. Nos. 300,073, 775,231, and others.

EXHIBIT 1

Int. Cl.: 4

Prior U.S. Cl.: 15

United States Patent and Trademark Office

Reg. No. 1,209,440
Registered Sep. 21, 1982

TRADEMARK
Principal Register

TEXACO

Texaco Inc. (Delaware corporation)
2000 Westchester Ave.
White Plains, N.Y. 10650

**For: MOTOR AND AVIATION GASOLINES,
JET FUELS, DIESEL FUELS, KEROSENES,
FUEL OILS, HOME HEATING OILS, LUBRI-
CATING OILS AND GREASES, in CLASS 4
(U.S. Cl. 15).**

First use 1908; in commerce 1908.
**Owner of U.S. Reg. Nos. 57,902, 812,793 and
others.**

Ser. No. 333,228, filed Oct. 19, 1981.

ROBERT M. ANDERSON, Primary Examiner

EXHIBIT 2

Int. Cl.: 37

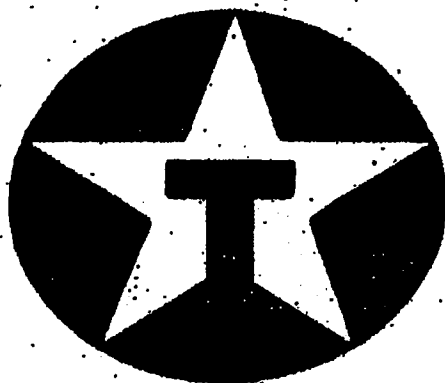
Prior U.S. Cl.: 103

United States Patent and Trademark Office

Reg. No. 1,315,019

Registered Jan. 15, 1985

SERVICE MARK
Principal Register



Texasco Inc. (Delaware corporation)
2000 Westchester Ave.
White Plains, N.Y. 10650

For: GAS STATION SERVICES, in CLASS 37
(U.S. Cl. 103).

First use Oct. 1, 1981; in commerce Oct. 1, 1981.

Owner of U.S. Reg. Nos. 1,222,303 and 1,222,305.

Ser. No. 473,796, filed Apr. 4, 1984.

SALLY BETH BERGER, Examining Attorney

EXHIBIT 3

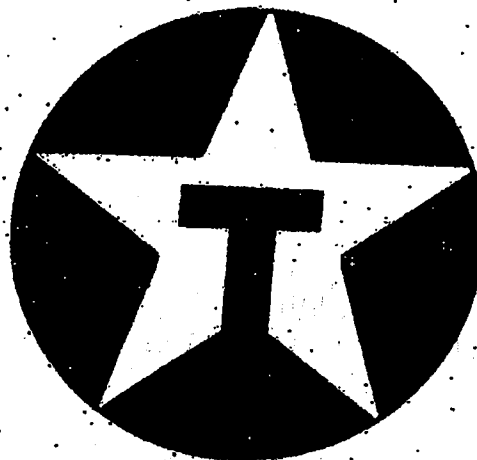
Int. Cl.: 4

Prior U.S. Cl.: 15

United States Patent and Trademark Office

Reg. No. 1,222,305
Registered Jan. 4, 1983

TRADEMARK
Principal Register



Texaco Inc. (Delaware corporation)
2000 Westchester Ave.
White Plains, N.Y. 10650

For: GASOLINE, in CLASS 4 (U.S. Cl. 15).
First use Oct. 1, 1981; in commerce Oct. 1, 1981.
Owner of U.S. Reg. Nos. 76,131, 1,168,864 and
others.

Ser. No. 342,674, filed Dec. 21, 1981.

PAUL F. GAST, Examining Attorney

EXHIBIT 4

Nº 1315020

THE UNITED STATES OF AMERICA

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof.

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks.

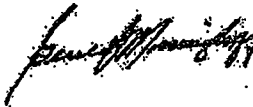
Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER.

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this fifteenth day of January, 1985.



COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 37

Prior U.S. Cl.: 103

United States Patent and Trademark Office

Reg. No. 1,315,020

Registered Jan. 15, 1985

SERVICE MARK
Principal Register



TEXACO

Texaco Inc. (Delaware corporation)
2000 Westchester Ave.
White Plains, N.Y. 10650

Ser. No: 473,797, filed Apr. 4, 1984.

For: GAS STATION SERVICES, in CLASS 37
(U.S. Cl. 103).

First use Oct. 1, 1981; in commerce Oct. 1, 1981.
Owner of U.S. Reg. Nos. 1,222,304 and 1,222,306.

SALLY BETH BERGER, Examining Attorney



Nº 1222306

THE UNITED STATES OF AMERICA

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof.

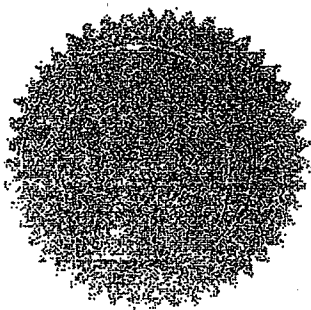
And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks;

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this fourth day of January, 1983.

A handwritten signature, likely of the Commissioner of Patents and Trademarks, written in ink.

COMMISSIONER OF PATENTS AND TRADEMARKS

EXHIBIT 6

Int. Cl.: 4

Prior U.S. Cl.: 15

United States Patent and Trademark Office

Reg. No. 1,222,306

Registered Jan. 4, 1983

TRADEMARK
Principal Register



TEXACO

Texaco Inc. (Delaware corporation)
2000 Westchester Ave.
White Plains, N.Y. 10650

Ser. No. 342,575, filed Dec. 21, 1981.

Int. Cl.: 37

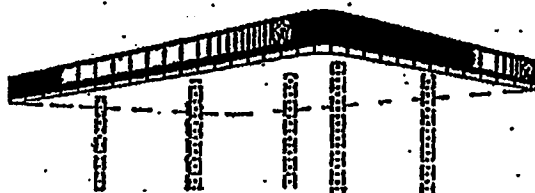
Prior U.S. Cls.: 100, 103 and 106

Reg. No. 2,259,016

United States Patent and Trademark Office

Registered July 6, 1999

**SERVICE MARK
PRINCIPAL REGISTER**



TEXACO INC. (DELAWARE CORPORATION)
2000 WESTCHESTER AVENUE
WHITE PLAINS, NY 10650

FOR GAS STATION SERVICES, IN CLASS
37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 3-9-1996; IN COMMERCE
3-9-1996.

OWNER OF U.S. REG. NOS. 1,222,305, 1,315,019
AND OTHERS.

THE DRAWING IS LINED FOR THE
COLORS RED AND GRAY.

THE MARK CONSISTS OF A RED AND
BLACK GASOLINE SERVICE STATION
CANOPY WITH GRAY POLES. THE DOTTED
OUTLINE OF THE CANOPY AND THE POLES
IS NOT PART OF THE MARK BUT IS MERELY
INTENDED TO SHOW THE POSITION OF THE
MARK.

SER. NO. 75-422,677, FILED 1-26-1998.

KENNETH D. BATTLE, EXAMINING ATTOR-
NEY

Int. Cl.: 37

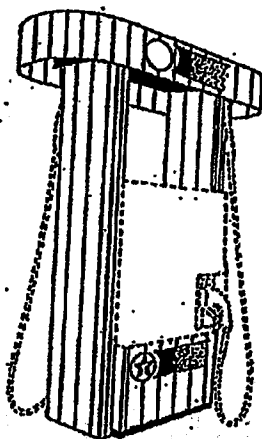
Prior U.S. Cls.: 100, 103 and 106

Reg. No. 2,251,166

United States Patent and Trademark Office

Registered June 8, 1999

**SERVICE MARK
PRINCIPAL REGISTER**



TEXACO INC. (DELAWARE CORPORATION)
2000 WESTCHESTER AVENUE
WHITE PLAINS, NY 10650

FOR: GAS STATION SERVICES, IN CLASS
37 (U.S. CLS. 100, 103 AND 106).
FIRST USE 3-9-1996; IN COMMERCE
3-9-1996.

THE DRAWING IS LINED FOR THE COLOR
RED. THE STIPPLING IS FOR SHADING PURPOSES.

THE MARK CONSISTS OF THE CONFIGURATION OF A RED AND BLACK GASOLINE PUMP. THE DOTTED LINES REPRESENT THE POSITIONING OF THE GAS DISPENSING UNIT, THE HOSE, AND THE HOSE HANDLE AND ARE NOT PART OF THE MARK.

SER. NO. 75-422,784, FILED 1-26-1998.

KENNETH D. BATTLE, EXAMINING ATTORNEY

Int. Cl.: 37

Prior U.S. Cls.: 100, 103 and 106

Reg. No. 2,264,612

United States Patent and Trademark Office

Registered July 27, 1999

**SERVICE MARK
PRINCIPAL REGISTER**



TEXACO INC. (DELAWARE CORPORATION)
2000 WESTCHESTER AVENUE
WHITE PLAINS, NY 10650

FOR: AUTOMOBILE SERVICE, STATION
SERVICES; AUTOMOTIVE MAINTENANCE
AND REPAIR SERVICES; AUTOMOTIVE LU-
BRICATION AND OIL CHANGE SERVICES, IN
CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 3-9-1996; IN COMMERCE
3-9-1996.

OWNER OF U.S. REG. NOS. 1,222,305, 1,315,019
AND OTHERS.

THE MARK IS LINED FOR THE COLORS
RED, SILVER AND DARK GRAY. THE STIP-
PLING IS FOR SHADING PURPOSES.

THE MARK CONSISTS OF THE CONFIGU-
RATION OF A BUILDING WITH A RED AND
BLACK FASCIA AND A T-STAR IN A CIRCLE
THEREON. THE REMAINDER OF THE BUILD-
ING PAINTED SILVER AND GRAY. THE
DOTTED OUTLINES OF THE DOORS AND
SIDE OF THE BUILDING IS NOT PART OF
THE MARK BUT MERELY INTENDED TO
SHOW THE POSITION OF THE MARK.

SER. NO. 75-466,685, FILED 4-13-1998.

DOMINICK J. SALEMI, EXAMINING ATTOR-
NEY